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November 10, 2020

Via ECF
Honorable Richard J. Sullivan
United States District Court Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *USA v. Burgess et al.*, (Tyshawn Burgess)
18 Cr. 373(RJS)

Dear Judge Sullivan:

I am appointed counsel for Tyshawn Burgess, and Samuel Coe is appointed co-counsel, pursuant to the Criminal Justice Act (CJA). We currently have a *Fatico* hearing scheduled for December 14, 2020, before Your Honor, together with co-defendant Ramal Curtis, who is represented by Richard Lind. We have received notice today that Maurice Curtis will be pleading guilty to new criminal charges based on conduct that occurred after he entered into a cooperation agreement with the government.

Mr. Curtis is the government's main witness against Mr. Burgess and Ramal Curtis, and has testified at the trial of a co-defendant, and will be testifying at the *Fatico* hearing in this case. To date, the defense has not received any discovery relating to Mr. Curtis' new criminal conduct. The defense respectfully requests that Your Honor enter an Order directing the government to produce all *Brady* material in its possession regarding Maurice Curtis' new criminal charges, or any other *Brady* material that the government possesses as to Mr. Curtis, or any other witness or matter relevant to Mr. Burgess' and Ramal Curtis' sentences.

IT IS HEREBY ORDERED THAT Defendant's request to adjourn the December 17, 2020 *Fatico* hearing is DENIED. This hearing, which was originally scheduled to occur in May 2020 (Doc. No. 640), has already been adjourned for a significant amount of time. In addition, Defendant does not explain why a new criminal charge filed against a government witness would necessitate a 60-day adjournment, or why the impact of COVID-19 on Defendant's ability to prepare for the hearing will meaningfully change over the next two months. IT IS FURTHER ORDERED THAT Defendant's request that the Court enter an order reaffirming the government's obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) is DENIED. The Court is confident that the government is aware of its production obligations and will comply with them without a reminder from the Court.

SO ORDERED:

Dated: 11/16/2020  RICHARD J. SULLIVAN
U.S.C.J., Sitting by Designation

As the Court is aware, On October 21, 2020, the Due Process Protections Act, Pub. L. No 116-182, 134 Stat.894 was signed into law by the President. The bill amends Rule 5 of the Federal Rules of Criminal Procedure to require District Courts to issue an order that “confirms the disclosure obligations of the prosecutor under *Brady v. Maryland*” at the outset of each criminal case, and the possible consequences of violating the order. In response to this law, several judges in this district have issued orders in pending cases, such as the Order from Judges Gardephe and Engelmeyer, attached as Exhibit A. Accordingly, the defense respectfully requests that Your Honor issue a similar order in this case, particularly in light of Mr. Curtis’ new criminal conduct.

The defense also respectfully requests a 60-day adjournment of the *Fatico* hearing in this matter. Richard Lynn, on behalf of Mr. Ramal Curtis, joins in this request, and Matthew Hellman, Esq., on behalf of the government, has no objection. This request is made in order to give the defense an opportunity to review and investigate any information received from the government regarding the new criminal conduct, as well as any other discovery produced by the government in response to this new law.

We also make this adjournment request in light of the resurgence of COVID-19 in our area. Mr. Burgess and Ramal Curtis prefer not to consent to remote proceedings at this time, yet do not feel safe with an in-person proceeding either. Moreover, Ramal Curtis is currently detained at the Metropolitan Correction Center, and there is a 21-day quarantine for any detainee who comes from court. Accordingly, for all the reasons set forth above, we respectfully request this adjournment.

Your Honor’s time and consideration of this request is greatly appreciated.

Respectfully submitted,
s/
Lorraine Gauli-Rufo
Sam Coe
Attorneys for Tyshawn Burgess

Enclosure

cc: All Counsel of Record (with enclosure)